

House Bill 1523

By: Representative Dobbs of the 53rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the imposition of income tax, rate, computation, and exemptions, so as to provide
3 for a tax credit for donations of interests in real property for public parks and recreation; to
4 provide legislative findings; to define certain terms; to provide for qualified donations; to
5 provide for exceptions; to provide for tax credits; to provide for the use and transfer of
6 credits; to provide for limitations; to provide for the determination of fair market value; to
7 provide for application; to provide for related matters; to repeal conflicting laws; and for
8 other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 The General Assembly finds that there is a great need for public parks and recreation areas
12 in this state, and that citizens would benefit greatly from having such areas in their
13 communities to convene, commune, and exercise. The current economic situation has
14 created many distressed properties scattered throughout communities which could be
15 converted to public parks and recreation areas. The owners of such properties should be
16 given sufficient incentive to transfer such properties to the state, local governments, or
17 organizations, such as neighborhood associations which qualify as charitable corporations,
18 which are willing to maintain such properties for the benefit of the community. It is,
19 therefore, in the interest of the citizens of this state to grant a tax credit to the owners of real
20 property who convey such property to be used in perpetuity for public enjoyment.

21 **SECTION 2.**

22 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
23 imposition of income tax, rate, computation, and exemptions, is amended by adding a new
24 Code section to read as follows:

"48-7-40.29.

(a) As used in this Code section, the term:

(1) 'Eligible donor' means any person who owns an interest in a qualified donation.

(2) 'Fair market value' means the value of the donated property established by a property appraisal or appraisals meeting the requirements of Section 170 of Title 26 of the United States Code, to be submitted in such manner as the commissioner may by regulation require.

(3) 'Qualified donation' means a donation in the form of a transfer of an interest in real property to the state, an instrumentality of the state, or a charitable organization described in Section 501(c)(3) of the federal Internal Revenue Code as provided in subsection (b) of this Code section.

(4) 'Related person' has the meaning provided by Code Section 48-7-28.3.

(5) 'Substantial valuation misstatement' means a valuation such that the value of any property claimed on any return of tax imposed under this chapter, or on any claim for refund of such tax, is 150 percent or more of the amount determined to be the correct amount of such valuation.

(b)(1) For taxable years beginning on or after January 1, 2011, a taxpayer shall be allowed a state income tax credit against the tax imposed by Code Section 48-7-20 or 48-7-21 for each qualified donation. Such tax credit shall be in an amount equal to 50 percent of the fair market value of any land or interest in land located in this state which is conveyed for the purpose of public parks and recreation as an unconditional donation by the landowner to a public entity or private community organization eligible to hold such land and interests therein for such purposes.

(2) The fair market value of qualified donations made under this Code section shall be determined in accordance with this Code section and substantiated by an appraisal prepared by a certified appraiser. The value of the donated interest in land that qualifies for credit under this Code section shall be subject to the limits established by Section 170(e) of the federal Internal Revenue Code. In order to qualify for a tax credit under this Code section, the appraisal shall be signed by the certified appraiser and a copy of the appraisal shall be submitted to the department.

(3) Qualified donations shall include the conveyance of a fee interest in real property or the conveyance in perpetuity of a conservation easement, provided that such conservation easement qualifies as a charitable deduction under Section 170(h) of the federal Internal Revenue Code. The use of such property as a public park or recreational area shall be assured in perpetuity.

(4) Any fee interest in real property or conservation easement that has been dedicated as open space within, or as part of, a residential subdivision or any other type of residential

62 or commercial development; dedicated as open space in, or as part of, any real estate
63 development plan; or dedicated for the purpose of fulfilling density requirements to
64 obtain approvals for zoning, subdivision, site plan, or building permits shall not be a
65 qualified donation under this article.

66 (c)(1) Any taxpayer that has been issued a tax credit by the department shall be allowed
67 to use such credit for the taxpayer's taxable year that begins in the calendar year for which
68 such credit was issued and for succeeding taxable years in accordance with the ten
69 consecutive taxable year carryforward provisions of subsection (d) of this Code section.

70 (2) Any taxpayer to whom a credit has been transferred pursuant to paragraph (3) of this
71 subsection may use such credit for the taxable year in which the transfer occurred and
72 unused amounts may be carried forward to succeeding taxable years, but in no event may
73 such transferred credit be used more than 11 years after it was originally issued by the
74 department or in any taxable year of such taxpayer that ended prior to the date of transfer.

75 (3)(A) Any taxpayer holding a credit under this article may transfer unused but
76 otherwise allowable credit for use by another taxpayer on Georgia income tax returns.
77 A taxpayer who transfers any amount of credit under this article shall file a notification
78 of such transfer to the department in accordance with procedures and forms prescribed
79 by the commissioner.

80 (B) A fee of 2 percent of the value of the donated interest or \$10,000.00, whichever is
81 less, shall be imposed upon any transfer arising from the sale by any taxpayer of credits
82 under this article.

83 (C) To the extent included in and not otherwise subtracted from federal adjusted gross
84 income, there shall be subtracted any amount of gain or income recognized by a
85 taxpayer on the application of a tax credit under this article against a Georgia income
86 tax liability.

87 (D) The transfer of the credit and its application against a tax liability shall not create
88 gain or loss for the transferor or the transferee of such credit.

89 (E) A pass-through tax entity, such as a partnership, limited liability company, or
90 Subchapter S corporation, may appoint a tax matters representative, who shall be a
91 general partner, member, manager, or shareholder, and register that representative with
92 the department. The department shall be entitled to deal with the tax matters
93 representative as representative of the taxpayers to whom credits have been allocated
94 or transferred by the entity under this article with respect to those credits. If a
95 pass-through tax entity allocates or transfers tax credits arising under this article to its
96 partners, members, or shareholders and the allocated or transferred credits are
97 disallowed, in whole or in part, such that an assessment of additional tax against a
98 taxpayer will be made, the department shall make written demand for payment of any

additional tax, together with interest and penalties, from the tax matters representative.

In the event such payment demand is not satisfied, the department shall proceed to collection against the taxpayers.

(4) Any tax credits that arise under this article from the donation of land or an interest in land made by a pass-through tax entity such as a trust, estate, partnership, limited liability company or partnership, limited partnership, Subchapter S corporation, or other fiduciary shall be used either by such entity if it is the taxpayer on behalf of such entity or by the member, manager, partner, shareholder, or beneficiary, as the case may be, in proportion to their interest in such entity in the event that income, deductions, and tax liability pass through such entity to such member, manager, partner, shareholder, or beneficiary or as set forth in the agreement of said entity. Such tax credits shall not be claimed by both the entity and the member, manager, partner, shareholder, or beneficiary for the same donation.

(d)(1) In no event shall the total amount of any tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. In no event shall the total amount of the tax credit allowed to a taxpayer under subsection (b) of this Code section exceed \$250,000.00 with respect to tax liability determined under Code Section 48-7-20 or \$500,000.00 with respect to tax liability determined under Code Section 48-7-21. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's succeeding ten years' tax liability. However, the amount in excess of such annual dollar limits shall not be eligible for carryover to the taxpayer's succeeding years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(2) Only one qualified donation may be made with respect to any real property that was, in the year prior to donation, within the same tax parcel of record, except that a subsequent donation may be made by a person who is not a related person with respect to any prior eligible donors of any portion of such tax parcel.

(e)(1) Whenever:

(A) Any person prepares an appraisal of the value of property and knows, or reasonably should have known, that the appraisal would be used in connection with a return or a claim for refund claiming a tax credit under this Code section; and

(B) The claimed value of the property on a return or claim for refund which is based on such appraisal results in a substantial valuation misstatement with respect to such property for purposes of claiming a tax credit under this Code section,

then such person shall pay a penalty in the amount determined under paragraph (2) of this subsection.

(2) The amount of the penalty imposed under paragraph (1) of this subsection on any person with respect to an appraisal shall be equal to the lesser of:

(A) The greater of:

(i) Twenty-five percent of the difference between the amount of the tax credit claimed on the taxpayer's return or claim for refund and the amount of the tax credit to which the taxpayer is actually entitled, to the extent the difference is attributable to the misstatement described in subparagraph (e)(1)(B) of this Code section; or

(ii) One thousand dollars; or

(B) One hundred twenty-five percent of the gross income received by the person described in subparagraph (e)(1)(A) of this Code section for the preparation of the appraisal.

(3) No penalty shall be imposed under paragraph (1) of this subsection if the person establishes to the satisfaction of the commissioner that the value established in the appraisal was more likely than not the proper value.

(4) Except as otherwise provided, the penalty provided by this subsection shall be in addition to any other penalties provided by law. The amount of any penalty under this subsection shall be assessed within three years after the return or claim for refund with respect to which the penalty is assessed was filed, and no proceeding in court without assessment for the collection of such penalty shall begin after the expiration of such period. Any claim for refund of an overpayment of the penalty assessed under this subsection shall be filed within three years from the time the penalty was paid.

(f) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section."

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.